

SOUTH AFRICA / JUDGMENT

Injury Caused by Defective Sandals (201503-0183) [2015]

ZACGSO 3 (18 August 2015)

[2015] ZACGSO 3

COURT

Consumer Goods and Services Ombud

BEFORE

Bonita Hughes

CASE / FILE NUMBER

201503-0183

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Ref: 201503-0183

INJURY CAUSED BY DEFECTIVE SANDALS

ASSESSMENT:

Summary of complaint

The complainant fell in February 2015 because of a sandal that is not safe to wear on the road. She hurt her knee and toe. She sent through all documentation to the supplier, who however denied liability as according to it it is not a quality issue.

The complainant wanted an audit done on the shoes. This was never done.

The matter was also referred to the supplier's insurer and it rejected the claim. It did not provide the complainant with a copy of their investigation.

The complainant is still waiting for the supplier to assist her.

Summary of the supplier's Response

The supplier advised that its insurer rejected the claim. The supplier also denies liability as the shoes show a fair amount of wear and tear and it cannot be held liable for the incident.

Assessment

We have considered all the evidence presented by both the complainant and the supplier and advise as follows:

This office provided the complainant with the supplier's response- the complainant were not happy with the feedback and could not understand how it could come to such a conclusion as the complainant still had the shoes in the complainant's possession.

We arranged the return of the complainant's shoes to the supplier to be inspected to see if there is any manufacturer's defect in the shoes that could have caused the complainant to fall.

In terms of section 61 of the Consumer Protection Act consumers can obtain redress from the producer, importer, distributor or retailer

where they have been injured because of a safety defect in a product. The supplier will be liable irrespective of whether negligence can be established. Consumers therefore no longer have the onerous burden of proving fault. A consumer must however still prove that the product had some sort of flaw that made it unsafe or otherwise defective in terms of the definitions set out in the Consumer Protection Act and the damage was caused wholly or partly by this defect. In this instance the shoes were returned to the supplier to be inspected and to determine if there are any defects or flaw that caused the complainant to fall.

The supplier sent us the inspection report completed when they first received the shoes. This report indicates that the necessary quality checks were done before it was sent to the various stores. The report also shows that the shoes passed the checks and tests performed on the shoes. The supplier also confirmed that it had no other returns of the sandals in any of their stores.

The supplier returned the complainant's shoes to their quality department to inspect them and to determine if the shoes are

defective in any way.

The quality department confirmed that there has been a considerable amount of wear and tear on the shoes, especially the back of the heel tip and the forepart of the sole bottom. On both areas the moulded grip lines and grip pattern has worn away. This would result in the sandal being less able to grip on wet smooth surfaces. It will however on normal pavement concrete or tar road surfaces still perform for its normal intended walking purpose.

Taking into account that there are various contributory factors that can cause one to fall it is of paramount importance that we determine with certainty that the shoes were defective and that the defect caused the complainant to fall before we can instruct the store to take responsibility for the complainant's injury.

In this instance we have not received any proof that the shoes are defective and the reports returned from the supplier indicates that the shoes do not have any flaws and are not defective.

Based on the facts of this case, the information and evidence furnished to this office and on the principles of reasonableness and fairness, there is no reasonable prospect of this office making a recommendation in the complainant's favour.

Bonita Hughes

Complaints Officer

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/injury-caused-v-by-defective-unknown-topic-acgso-2015>

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